

B<sup>1</sup>  
P, (c) a second outwardly extending planar ring-shaped means, said ring shaped means being removably located within the closed end and having a diameter sufficient to maintain the closed end in a vagina of a user.

Please amend claim 20 as follows

B<sup>2c</sup>  
3 20. (Amended) The tubular protective device of claim [19] ~~21~~<sup>22</sup> further consisting of a means for affixing said second outwardly extending ring-shaped means to said flexible, thin-walled tube.

*over*  
REMARKS

In accordance with 37 C.F.R. 1.111 reconsideration of the office action of November 20, 1987, and reexamination of the application are respectfully requested.

Claims 15, 19, and 20 are pending in the application. Claims 15 and 19 are deleted with this amendment and claims 21 and 22 are, respectively, substituted therefor.

A new information disclosure statement accompanies this response.

The applicant's attorney thanks the Examiner for the interview conducted on December 4, 1987. During the interview the applicant's attorney presented an exhibit of the invention. Also during the interview, claim

language was discussed that is believed to both overcome the 35 U.S.C. Section 112 rejection and to avoid the cited disclosures including U.S. Patent Number 4,232,675 to Meldahl. The claim language presented with this response is believed to be in accordance that claim language discussed during the interview.

Relying on 35 U.S.C. Section 112, second paragraph, the examiner rejected claims 15, 19, and 20 as being indefinite. Specifically, the Examiner objected to the phrase "adapted for radially stretching" and objected to the description of the "second elastic ring." The claim language presented above defines the diameter of the "first ring" or "outwardly extending collar-shaped means" as having a diameter larger than the diameter of the flexible tube. The "second ring is now defined as being removably located in the closed end and having a diameter sufficiently large to permit movement of a penis within the tube during coitus. This rejection should be withdrawn.

Relying on 35 U.S.C. Section 102(b) the Examiner has rejected claims 15, 19, and 20 as being anticipated by Adams '541. The applicant respectfully traverses this rejection.

In order for the Examiner's citation to constitute anticipation, all material elements of a claim must be formed in one source. The Adams patent does not disclose any element that is "a second elastic ring,"

especially one that is removable, or "a second outwardly extending planar ring-shaped means" that is removable. Element 28 of the Adams patent is "a spirally wound, resilient and compressible narrow rubber ribbon or spring material." This element of the Adams patent is not a "ring" or circle. The difference between the spiral element 28 of the Adams patent and a ring is of significant importance to the Adams invention in that the spiral structure holds the tube open in a cylindrical form. This allows the Adams invention to better serve as a receptacle.

The applicant has amended his independent claims to insert the word "planar" to modify the second ring or ring-shaped means. A substantially planar structure allows the closed end of the applicant's flexible tube to be held in a vagina in a manner similar to a diaphragm as described in the center paragraph on page 14 of the specification. This rejection should be withdrawn.

Relying on 35 U.S.C. Section 103 the Examiner has rejected claims 15, 19, and 20 as being unpatentable over "The Bee Gee Company" brochure in view of Graham. The applicant respectfully traverses this rejection.

The applicant's invention, and in particular the claimed female embodiment of the invention, is unobvious over the Examiner's cited combination. Neither of the citations, alone or in combination, makes obvious a the

applicant's structure which combines a flexible thin-walled tube with a collar-shaped outwardly extending open end that is stretched radially having a large diameter to permit freedom of movement of the male during coitus. Furthermore, the cited documents do not combine these structural elements with an inner ring or ring-like means.

The unexpected result of the applicant's claimed structure is that the radially stretched collar-shaped portion shields a significantly greater area about the base of the penis or about the vulva than traditional condoms. This structure which provides the greater shielding of these areas is more adequate for preventing a transfer of body fluids that can potentially contain infectious matter. The inner ring structure provides the additional unexpected results of being both a device that assists in the insertion of the condom-like tube into the vagina and a retainer for the device in the vagina. The loose fitting structure of the tube of the invention for the male permits a greater sensitivity not obtainable in a standard condom. The most surprising result of the applicant's invention as claimed by the currently pending claims, is that the structure provides a practical condom for selection, use, and wear by a female.

The "The Gee Bee Company" brochure discloses a prophylactic device, as illustrated in the figures on

pages 13 through 15, that is a loose fitting tubular prophylactic having a grooved outer ring. The grooved outer ring does not form a collar-shaped, outwardly extending portion at the opening of the prophylatic. Consequently, no provision is made to inhibit or prevent the transfer of body fluids, that may contain infectious matter, between the partners. This is because the outer ring, by not radially stretching the tube into a collar-shaped portion, fails to provide adequate protection against the transfer of body fluids. This disclosure does not disclose nor make obvious to one of ordinary skill in the art a "female condom" having an inner ring to insert and secure the device in the vagina.

U.S. Patent Number 899,251 to Graham discloses an animal breeder's bag. The bag is a condom-like device for livestock that can be used to collect semen. The bag contains a fixed inner band 1 that is positioned at about the middle of the length of the device. This position for the attachment of the band 1 provides for a tube 4 and a bag-like extension 3. The purpose of the band 1 and cross strips 9 and 10 is to collect semen in the pocket 11. The rubber frame 6 may be made in various shapes, but is not disclosed as forming a collar-shaped, outwardly extending portion at the opening of the prophylatic. The rubber frame 6 does not form a collar-shaped, outwardly extending portion at the

opening of the prophylatic. As with the device discussed above, no provision is made to inhibit or prevent the transfer of body fluids, that may contain infectious matter, between the partners. This is because the outer ring does not radially stretch the tube into a collar-shaped portion and, thereby, fails to provide adequate protection against the transfer of body fluids. This patent does not disclose nor make obvious to one of ordinary skill in the art an embodiment wherein an inner ring is suitable for use to insert the device in the vagina and hold the end of the device about the cervix in a manner similar to a diaphragm.

The combination of the Examiner's citations teaches away from the presence of inner inner ring, especially a removable inner ring, and does not teach a ring or ring-like structure that maintains the closed end of the tube in the vagina of a user. Neither of the citations teaches a collar-shaped structure that prevents the transfer of fluids between partners. The combination of the citations has a "resilient band" that can be "folded" (see, claims 5 and 8 of the patent) and which is affixed in the center of the tube. This combination does not make obvious an inner ring or ring-like means that is sufficiently rigid to maintain the end of the tube in a vagina. This combination also does not make

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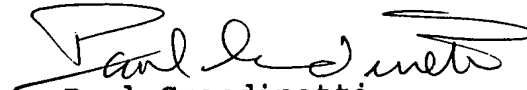
obvious the inner ring or ring-like means in combination with a collar-like structure. This rejection should be withdrawn.

The Mendahl patent, discussed during the interview, does not disclose a structure that anticipates or makes obvious the applicants' inner ring or ring-like means structure that is substantially planar.

The German patent Number 210,413 also does not disclose a structure that anticipates or makes obvious the applicants' inner ring or ring-like means structure that is substantially planar.

For the reasons discussed above, the applicant respectfully submits that his application is in condition for allowance. Favorable consideration of this application in light of the amendments and remarks is respectfully requested. If there are any additional fees required, please charge our Deposit Account Number 06-1110.

Respectfully submitted,

  
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